UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EDWARD ZYBURO, on behalf of himself and all others similarly situated, Plaintiff, v. NCSPLUS INC., Defendant.	CASE NO: 12-cv-06677 (JSR)

STIPULATION AND AGREEMENT OF SETTLEMENT

This Stipulation and Agreement of Settlement, dated March 4, 2015 ("**Stipulation**"), embodies a settlement ("**Settlement**") made and entered into by the following Settling Parties: (i) Plaintiff Edward Zyburo, on behalf of himself and the certified Class ("**Plaintiff**"), (ii) Defendant NCSPlus Inc. ("**Defendant**"), and (iii) Defendant's insurer, Continental Casualty Company ("**Continental**" or "**Continental Casualty**"), (collectively, the "**Settling Parties**"), which resolves the above-referenced class action litigation pending in the United States District Court for the Southern District of New York ("**Action**") and any prior actions filed by Plaintiff on behalf of himself individually or a proposed class against Defendant and/or Continental. This Stipulation is intended by the Settling Parties to fully, finally and forever resolve, discharge and settle the Released Claims, upon and subject to the terms and conditions hereof and subject to the approval of the Court.

I. THE LITIGATION

On August 31, 2012 a class action lawsuit was filed in the United States District Court for the Southern District of New York ("**Court**") on behalf of "all persons within the United States to whom any telephone calls were made by Defendant within four years prior to the date of the filing of this action to such person's cellular telephone, paging service, specialized mobile radio service, other radio common carrier service, through the use of any automatic telephone dialing system which has the capacity to store or produce numbers (whether or not such capacity was used), including, without limitation, an automated dialing machine dialer, auto-dialer, or predictive dialer, or an artificial or prerecorded voice, without such person's prior express consent." The Complaint alleged violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* ("**TCPA**"), and sought certification of the proposed class, statutory damages, injunctive relief, and an award of attorney's fees and costs on behalf of Plaintiff and the proposed class.

On September 16, 2014, the Court granted Plaintiff's Amended Motion for Class Certification and certified a class consisting of "all persons within the United States whose cellular telephones were called by NCSPlus Inc. using an automatic telephone dialing system with the capacity to store or produce telephone numbers, including, but not limited to, an automated dialing machine, auto-dialer or predictive dialer and/or utilizing an artificial or prerecorded voice, without such persons' prior express consent, between August 31, 2008 and August 31, 2012."

II. CLAIMS OF PLAINTIFF AND BENEFITS OF SETTLEMENT

This litigation is a class action brought by Plaintiff on behalf of himself and the certified Class against Defendant for allegedly violating the TCPA by making 2,982,882 calls to the cellular telephones of 146,850 Class Members between August 31, 2008 and August 31, 2012 using an autodialer without their prior express consent to do so. Defendant denies all of Plaintiff's allegations.

Plaintiff brought this Action in good faith and believes that the claims asserted in the Action have merit and that the evidence developed to date supports the claims alleged. However, Plaintiff recognizes and acknowledges the expense and length of continued proceedings necessary to prosecute the Action against Defendant through trial and appeals. A significant factor influencing Plaintiff's decision to settle this Action is Defendant's inability to cover Plaintiff and Class Members' claims in excess of its professional liability policy, which is a wasting policy[1] issued by Continental with a limit of liability of $2,000,000.00. Defendant has no meaningful assets beyond this policy to pay the claims of Plaintiff and the Class. Further, Plaintiff has taken into account the uncertain outcome and risk of any litigation, especially in complex cases such as this Action, as well as the difficulties and delays inherent in such litigation. Plaintiff is also mindful of possible defenses to the TCPA violations asserted in the Action. Plaintiff believes that the Settlement set forth in the Stipulation confers substantial benefits upon the certified Class. Based on their evaluation, Plaintiff and Class Counsel have determined that the Settlement set forth in the Stipulation is in the best interests of Plaintiff and the certified Class, and that the Settlement is fair, reasonable and adequate.

III. DEFENDANT'S DENIAL OF WRONGDOING AND LIABILITY

Defendant has denied and continues to deny each and all of the claims and contentions alleged in this Action. Defendant has expressly denied and continues to deny all charges of wrongdoing or liability against it arising out of any of the conduct, acts or omissions alleged, or

[1] The term "wasting" refers to provisions within liability policies which cause the overall limits of liability to be reduced by payment of defense costs. Here, the more that this case is litigated, including at trial and any subsequent appeals, the sum available under the Continental policy will be reduced to pay the fees, costs and expenses of the litigation.

that could have been alleged, in this Action. Nonetheless, Defendant has concluded that further litigation of the Action would be protracted and expensive, and that it is desirable that the Action be fully and finally settled in the manner and upon the terms and conditions set forth in this Stipulation. Defendant has, therefore, determined that it is desirable and beneficial to it that the Action be settled in the manner and upon the terms and conditions set forth in this Stipulation.

IV. TERMS OF STIPULATION AND AGREEMENT OF SETTLEMENT

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the Plaintiff (for himself and the certified Class), Defendant and Continental, that, subject to the approval of the Court, in consideration of the benefits flowing to the Settling Parties from the Settlement set forth herein, this Action and the Released Claims shall be finally and fully compromised, settled and released, and the Action shall be dismissed with prejudice, as to all Settling Parties, upon and subject to the terms and conditions of the Stipulation, as follows.

1. Definitions

As used in the Stipulation, the following terms have the meanings specified below:

1.1 "Class" or "Class Members" means the class of persons certified by the Court on September 16, 2014, who did not exclude themselves by submitting a valid written exclusion request by the November 17, 2014 deadline.

1.2 "Class Counsel" means John Yanchunis and Jonathan Cohen of the law firm of Morgan & Morgan Complex Litigation Group.

1.3 "Class Period" means the period from August 31, 2008 through August 31, 2012.

1.4 "Continental" or "Continental Casualty" shall mean Continental Casualty Company and all of its respective past, present and future parent or indirect parent corporations, subsidiaries, affiliated entities, joint venturers, divisions, their predecessors, successors and assigns, related corporations or companies, and each of their directors, officers, shareholders, agents, employees, attorneys, and representatives. Continental issued a professional liability insurance policy to Defendant with a limit of liability of $2,000,000.00.

1.5 "Defendant" means NCSPlus Inc.

1.6 "Effective Date" means the first date by which all of the events and conditions specified in paragraph 7.1 of the Stipulation have been met and have occurred.

1.7 "Escrow Agent" means Angeion Group or its successor.

1.8 "Final" means when the last of the following with respect to the Order approving the Stipulation, substantially in the form attached hereto as Exhibit A-1, shall occur: (i) the expiration of the time to file a motion to alter or amend the Order under Federal Rule of Civil Procedure 59(e) has passed without any such motion having been filed; (ii) the expiration of the time in which to appeal the Order has passed without any appeal having been taken; and (iii) if a motion to alter or amend is filed or if an appeal is taken, the determination of that motion or appeal in such a manner as to permit the consummation of the Settlement, in accordance with the terms and conditions of this Stipulation. For purposes of this paragraph, an "appeal" shall include any petition for a writ of *certiorari* or other writ that may be filed in connection with approval or disapproval of this Settlement, or any other appellate proceeding opposing the Settlement.

1.9 "Order" means the Order dismissing the case with prejudice to be rendered by the Court upon final approval of the Settlement, substantially in the form attached hereto as Exhibit A-1.

1.10 "Net Settlement Fund" means the Settlement Fund of $1,800,000.00 minus the fees, costs, expenses and awards set forth in the Stipulation, including, but not limited to, those identified in the Plan of Distribution.

1.11 "Person" means an individual, corporation (including all divisions and subsidiaries), partnership, limited partnership, association, joint stock company, joint venture, limited liability company, professional corporation estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity and his, her or its spouses, heirs, predecessors, successors, representatives, or assignees.

1.12 "Plaintiff" means Edward Zyburo.

1.13 "Class Counsel" means John Yanchunis and Jonathan Cohen of the law firm of Morgan & Morgan Complex Litigation Group.

1.14 "Plan of Distribution," as set forth in paragraph 9 of the Stipulation, means a plan or formula of allocation of the Net Settlement Fund whereby the Settlement Fund shall be distributed to Class Members after payment of expenses of notice and administration of the Settlement, any service award approved by the Court to be provided to Plaintiff, and such attorney's fees, costs, and expenses, as may be awarded to Class Counsel by the Court. The Released Persons shall not have any responsibility or liability with respect the Plan of Distribution.

1.15 "Released Claims" means any and all claims, demands, rights, debts, obligations, costs, expenses, wages, liquidated damages, statutory damages, penalties, liabilities and/or causes of action of any nature and description whatsoever, whether known or unknown (including, but not limited to, "Unknown Claims" as defined in paragraph 1.20), at law or in equity, whether concealed or hidden, whether under federal, state, and/or local law, statute, ordinance, regulation, common law, or other source of law, that were asserted in the Action or could have been asserted against the Released Persons, or any of them, by reason of, in connection with, based on, arising out of, related to, or in any way involving, directly or indirectly, any request(s) for coverage for the Action under the Continental policy or any insurance policy issued by Continental or any of its affiliates, or arising out of, derived from, or related to, in whole or in part, the claims or facts or circumstances asserted or alleged in, or underlying, the Action, including, without limitation, any and all demands, claims, allegations, or causes of action asserted by Plaintiff under the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. 1692 *et seq.* or arising out of, or relating to, Defendant's alleged violations of the TCPA during the Class Period. Excluded from the "Released Claims" are claims to enforce the Settlement.

1.16 "Released Persons" means Defendant and Continental as well as each of the aforementioned's respective present, former or future parents, subsidiaries, affiliates, related companies, divisions, joint ventures, agents, predecessors, successors and assigns, and each of them, and each and all of their respective present, former or future officers, owners, members, managers, principals, executives, shareholders, directors, employees, agents, attorneys, accountants, auditors, financial advisors, commercial bank lenders, insurers, reinsurers, investment bankers, representatives, consultants, advisory board members, independent contractors, general and limited partners and partnerships, creditors, liquidators, administrators, trustees, heirs, estates, executors, administrators, predecessors, successors and assigns, the foregoing persons' spouses, and all others acting by, though, under or in concert with any of the foregoing

1.17 "Releasing Persons" means Plaintiff; Class Members; any corporation or other business entity in which any of the Class Members is a principal, partner, or otherwise has a controlling interest, and the Class Members' or any such business entity's respective present, former or future parents, subsidiaries, affiliates related companies, divisions, joint ventures, agents, predecessors, successors and assigns, and each of them, and each and all of their respective present, former or future officers, owners, members, managers, principals, executives, shareholders, directors, employees, agents, attorneys, accountants, auditors, financial advisors, commercial bank lenders, insurers, reinsurers, investment bankers, representatives, consultants, advisory board members, independent contractors, general and limited partners and partnerships, creditors, liquidators, administrators, trustees, heirs, estates, executors, administrators, predecessors, successors and assigns, the foregoing persons' spouses, and all others acting by, though, under or in concert with any of the foregoing.

1.18 "Settlement Administrator" means Angeion Group or its successor.

1.19 "Settlement Fund" means $1,800,000.00 in cash to be paid to the Escrow Agent pursuant to paragraph 2.1 of this Stipulation. The Settlement Fund is composed of $1,800,000.00 to be paid by Continental from the professional liability insurance policy issued to Defendant.

1.20 "Settling Parties" means, collectively, Defendant, Continental, and Plaintiff on behalf of himself and the Class.

1.21 "Unknown Claims" means any Released Claims which Plaintiff or any Class Member does not know or suspect to exist in his, her or its favor at the time of the release of the Released Persons which, if known by him, her or it, might have affected his, her or its settlement with and release of the Released Persons, or might have affected his, her or its decision not to object to this Settlement. With respect to any and all Released Claims, the Settling Parties stipulate and agree that, upon the Effective Date, Plaintiff shall expressly and each of Class Members shall be deemed to have, and by operation of the Order shall have, expressly waived any and all provisions, rights and benefits conferred by the laws of the State of New York. Plaintiff and Class Members may hereafter discover facts in addition to or different from those which he, she or it now knows or believes to be true with respect to the subject matter of the Released Claims, but Plaintiff shall expressly, and each Class Member, upon the Effective Date, shall be deemed to have, and by operation of the Order shall have, fully, finally, and forever settled and released any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct that is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. Plaintiff acknowledges, and Class Members shall be deemed by operation of the Order to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the Settlement of which this release is a part.

2. The Settlement

a. The Settlement Fund

2.1 Defendant and Continental shall cause the payment of $1,800,000.00 to be transferred to the Escrow Agent within fifteen (15) business days after the later of: (i) the date that the Court has entered an order preliminarily approving the Settlement; and (ii) the date that Defendant receives instructions from Class Counsel referencing a taxpayer identification number for the Settlement Fund. These funds, in the total amount of $1,800,000.00, shall constitute the

Settlement Fund. The Settlement Fund shall be held by the Escrow Agent until further order of the Court, except that prior to the time the Court enters the Order, the Fund may be drawn upon by the Escrow Agent to pay class notice and administration costs. All costs and expenses in connection with the administration of the Settlement, any service award to Plaintiff and the fees, costs and expenses awarded to Class Counsel shall be paid from the Settlement Fund subject to approval from the Court in the manner described in Section 9.

b. The Escrow Agent

2.2 The Escrow Agent shall maintain the Settlement Fund deposited pursuant to paragraph 2.1 hereof in a non-interest bearing bank account maintained at a banking institution that is fully insured by the United States Government or an agency thereof.

2.3 The Escrow Agent shall not disburse the Settlement Fund except: (a) in order to pay for notice and administration costs pursuant to paragraph 2.1 hereof; (b) as provided in the Stipulation; (c) by an order of the Court; or (d) with the written agreement of counsel for the Settling Parties.

2.4 Subject to further order(s) and/or directions as may be made by the Court, or as provided in the Stipulation, the Escrow Agent is authorized to execute such transactions as are consistent with the terms of the Stipulation. The Settling Parties shall have no responsibility for, interest in, or liability whatsoever with respect to the actions of the Escrow Agent, or any transaction executed by the Escrow Agent.

2.5 All funds held by the Escrow Agent shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to the Stipulation and/or further order(s) of the Court.

c. Termination of Settlement

2.6 In the event that the Stipulation is not approved or fails to become effective for any reason, the Escrow Agent shall return to Continental the Settlement Fund of $1,800,000, in its entirety pursuant to written instructions from Defendant's counsel. If any notice, escrow or other costs, expenses or fees have been properly and actually incurred or paid at the time the Settlement fails to become effective, and there are not sufficient funds remaining in the escrow account to refund to Continental the full $1,800,000 Settlement Fund, then the shortfall (the difference between the $1,800,000 Settlement Fund and the amount available for refund) will be borne equally by Continental and Plaintiff, such that within five business days of the refund being issued to Continental by the Escrow Agent, Plaintiff will remit to Continental one-half (1/2) of the amount of the shortfall.

3. Notice Order and Settlement Hearing

3.1 Promptly after execution of the Stipulation, the Settling Parties shall submit the Stipulation together with the attached exhibits ("**Exhibits**") to the Court and shall apply for entry of an order ("**Notice Order**"), substantially in the form attached hereto as Exhibit A-2, requesting, *inter alia*, the preliminary approval of the Settlement set forth in the Stipulation; approval for the mailing of a settlement notice postcard ("**Notice**"); and approval for the posting of a settlement notice on the website located at www.NCSPlusLitigation.com (or some other website established and maintained by the Settlement Administrator) in the forms attached hereto as Exhibits A-3 and A-4. The Notice shall include a summary of the Settlement terms set forth in the Stipulation, the proposed Plan of Distribution, the general terms of the Fee and Expense Motion, the directions for the filing of objections, and the date of the Final Settlement Approval Hearing.

3.2 Class Counsel shall request that after notice is given to the Class, the Court hold a hearing ("**Final Settlement Approval Hearing**") and approve the Settlement of the Action as set forth herein. At or after the Final Settlement Approval Hearing, Class Counsel shall also request that the Court approve the proposed Plan of Distribution and the Fee and Expense Motion.

4. Releases

4.1 Upon the Effective Date, the Releasing Persons, including Class Counsel, and each of them, shall be deemed to have, and by operation of the Order shall have, fully, finally, and forever released, relinquished and discharged against the Released Persons, and each of them, all Released Claims (including Unknown Claims), as well as any other demands, claims, allegations or causes of action arising out of, relating to, or in connection with, the defense, settlement or resolution of the Action or the Released Claims.

4.2 Upon the Effective Date, Plaintiff and each Class Member, and their predecessors, successors, agents, representatives, attorneys and affiliates, and the heirs, executors, administrators, successors and assigns of each of them, directly or indirectly, individually, derivatively, representatively or in any other capacity, shall be permanently barred and enjoined from the assertion, institution, maintenance, prosecution or enforcement against Defendant, Continental, or any other Released Person(s), in any state or federal court or arbitral forum, or in the court of any foreign jurisdiction, of any and all Released Claims; provided however, that if Defendant and/or Continental: (a) fails to execute the Stipulation and such other documents as may be required to obtain final Court approval of the Stipulation; or (b) fails to cause Continental's contribution to the Settlement Fund to be deposited with the Escrow Agent in accordance with the terms of this Stipulation, the Releasing Persons shall not be so barred and enjoined with respect to claims against the Released Persons.

4.3 Upon the Effective Date, Defendant and any of the Released Persons shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished and discharged Plaintiff, Class Members, and Class Counsel from all claims (including Unknown Claims) arising out of, relating to, or in connection with, the institution, prosecution, assertion, settlement or resolution of the Action or the Released Claims.

5. Administration of Settlement Notice Plan and Objections

5.1 The Settlement Administrator, subject to such supervision and direction of the Court as may be necessary or as circumstances may require, shall provide notice of the Settlement to the Class.

5.2 Within eight (8) business days of the date that the Court enters an order preliminarily approving the Settlement, the Settlement Administrator shall mail to all Class Members with reasonable effort: (1) a form of notice, substantially in the form hereto as Exhibit A-3, setting forth a summary of the terms of the Stipulation, including the proposed Plan of Distribution and Class Counsel's proposed request for attorney's fees, costs and expenses; the right to object to the Settlement, proposed Plan of Distribution, or proposed request for fees, costs and expenses; and the right to appear at the Final Settlement Approval Hearing.

5.3 Within eight (8) business days of the date that the Court enters an order preliminarily approving the Settlement, the Settlement Administrator shall cause the Notice to be posted on the website located at www.NCSPlusLitigation.com (or some other website established and maintained by the Settlement Administrator), which was created by the

Settlement Administrator and is dedicated to this Action. The cost of the procedures described in this paragraph shall be paid out of the Settlement Fund.

5.4 Within thirty (30) calendar days after the mailing of the Notice or such other time as may be set by the Court, each Class Member who wishes to object to the Settlement shall be required to submit to the Court and the Settlement Administrator a letter stating his, her or its objection to the Settlement. Any such written objection must be received by the Court and the Settlement Administrator on or before April 23, 2015.

5.5 Except as otherwise ordered by the Court, all Class Members who fail to submit written objections as set forth in paragraph 5.4, shall be forever barred from objecting to the Stipulation and the Settlement set forth herein, but will in all other respects be subject to and bound by the provisions of the Stipulation, the releases contained herein, and the Order.

5.6 The Released Persons shall have no responsibility for, interest in, or liability whatsoever with respect to the Settlement notice plan or objection procedures set forth herein.

5.7 No Person shall have any claim against Plaintiff, Class Counsel, Defendant, Continental, the Released Persons or their respective counsel, or the Settlement Administrator, based on the administration of the Settlement, including, without limitation, the Settlement notice plan, distributions made in accordance with the Settlement Agreement and the Settlement contained herein, the Plan of Distribution, or further order(s) of the Court.

6. Attorney's Fees, Costs and Expenses for Class Counsel

6.1 Class Counsel may submit a motion ("**Feeand Expense Motion**") seeking distributions to Class Counsel from theSettlement Fund for: (a) reimbursement of actual costs and expenses incurred in connection withprosecuting the Action; plus (b) an award of attorney's fees to be paid out of the SettlementFund in an amount not to exceed 25% of the Settlement Fund as allowed by the Court. Defendant will take no position with regard tothe Fee and Expense Motion if the Motion complies with this Stipulation, but nothing in thisclause or Agreement shall prevent Defendant from responding, in full, to any of the Court'sinquiries regarding the Fee and Expense Motion. However, under no circumstances shall Class Counsel seek or obtain compensation for time, fees or expenses already paid by NCSPLUS pursuant to Court Orders dated 2/11/13 (Docket Entry 18), 5/1/14 (Docket Entry 50), 7/28/14 (Docket Entry 62), and 10/20/14 (Docket Entry 88). Neither Class Counsel nor any Class Member shall be entitled to terminate the Stipulation if the Courtdisapproves of or modifies the terms of this Stipulation with respect to attorney'sfees, costs or expenses, or the distribution of the Net SettlementFund.

6.2 The attorney's fees awarded, and all the costs and expenses, including the fees of experts and consultants, as awarded by the Court (the "Fee and Expense Award"), shall be paid to Class Counsel from the Settlement Fund, as ordered, within five calendar days after the Effective Date. Defendant and Continental shall have no obligation to make any payment other than to fund the Settlement Fund as provided in this Stipulation, and shall have no responsibility with respect to the allocation of attorney's fees amongst Class Counsel, but nothing in this clause shall prevent Defendant from responding in full to any of the Court's inquiries regarding the attorney's fees. In the event the Stipulation shall not become effective for any reason or the Court does not render final approval of the Settlement, any attorney's fees, costs and expenses, including the fees of experts and consultants, as awarded by the Court, and paid to Class Counsel, shall be refunded to Continental When an obligation to refund or repay the Fee and Expense Award arises under this Stipulation, Class Counsel, the law firm of Morgan & Morgan Complex Litigation Group, and the law firm of Morgan & Morgan, P.A. shall be jointly and severally obligated to refund or repay to Continental the full amount that is required to be repaid.

regardless of whether any portion of the Fee and Expense Award has already been distributed to Plaintiffs' counsel or any other person or entity. The obligations in this Paragraph shall survive and remain in full force and effect and be binding in all respects on Plaintiffs' Counsel, the law firm of Morgan & Morgan Complex Litigation Group, and the law firm of Morgan & Morgan, P.A., even if the Settlement is terminated, the Settlement is not approved, or the Effective Date does not occur.

6.3 The procedure for and the allowance or disallowance by the Court of the Fee and Expense Motion to be paid out of the Settlement Fund, as set forth in the Stipulation, and any order or proceeding relating to the Fee and Expense Motion, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel the Stipulation, or affect or delay the finality of the Order, approving the Stipulation and the Settlement of the Action.

6.4 Released Persons shall have no responsibility for any payment of attorney's fees, costs and expenses to Class Counsel or Class Member's counsel over and above payment of the Settlement Fund.

6.5 Released Persons shall have no responsibility for the allocation among Class Counsel and/or any other Person who may assert some claim thereto, of any Fee and Expense Award that the Court may make in the Action.

7. Conditions of Settlement; Effect of Disapproval or Cancellation

7.1 The Effective Date of the Stipulation shall be conditioned on the occurrence of all of the following events:

(a) execution of the Stipulation and such other documents as may be required to obtain final Court approval of the Stipulation in a form satisfactory to Plaintiff, Defendant, and Continental:

(b) preliminary approval of the Settlement by the Court;

(c) Defendant and Continental causing Continental's contribution to the Settlement Fund to be deposited with the Escrow Agent;

(d) the Court entering the Notice Order, as required by paragraph 3.1 hereof, and notice being provided to the Class;

(e) final approval of the Settlement by the Court;

(f) entry of an Order by the Court that, *inter alia*, dismisses with prejudice the Action as set forth above; and

(g) the Order becoming Final, as defined in paragraph 1.8 hereof.

7.2 Upon the occurrence of all of the events referenced in paragraph 7.1 hereof, any and all remaining interest or right of Defendant and/or Continental in or to the Settlement Fund, if any, shall be absolutely and forever extinguished. Upon the occurrence of any of the following events, the Stipulation shall be canceled and terminated unless Class Counsel and Defendant's Counsel mutually agree in writing to proceed with the Settlement:

(a) Defendant and/or Continental fails to cause the Settlement Fund to be deposited with the Escrow Agent as required by paragraph 2.1 hereof;

(b) the Court declines to enter the Notice Order, as required by paragraph 3.1 hereof;

(c) the Court declines to enter an Order that, *inter alia*, dismisses with prejudice the Action as set forth above; or

(d) the Order fails to become Final, as defined in paragraph 1.8 hereof.

7.3 In the event that the Stipulation is not approved by the Court or the Settlement set forth in the Stipulation, for any reason, fails to become effective in accordance with its terms, the Settling Parties shall be restored to their respective positions in the Action as of February 27, 2015. In such event, the terms and provisions of the Stipulation, with the exception of paragraphs 1.1-1.20, 2.6, 6.2 and 8.3-8.4 hereof, shall have no further force and effect with respect to the Settling Parties and shall not be used in this Action or in any other proceeding for any purpose, and any Order or order entered by the Court in accordance with the terms of the Stipulation shall be treated as vacated, *nunc pro tunc*, and the Settling Parties shall be deemed to return to their status as February 27, 2015 and shall be required to present an amended schedule to the Court.

8. Miscellaneous Provisions

8.1 The Settling Parties: (a) acknowledge that it is their intent to consummate thisStipulation; and (b) agree to cooperate to the extent reasonably necessary toeffectuate and implement all terms and conditions of the Stipulation and to exercisetheir best efforts to accomplish the foregoing terms and conditions of the Stipulation.

8.2 The Settling Parties intend this Settlement to be a final and completeresolution of all disputes between them with respect to the Action. The Settlement shall notbe deemed an admission by any Settling Party as to the merits of any claim or defense. TheOrder will contain a finding that, during the course of the Action, the parties and theirrespective counsel at all times complied with the requirements of Rule 11 of the Federal Rules of CivilProcedure. The Settling Parties agree that the amount paid to the Settlement Fund and theother terms of the Settlement were negotiated in good faith by the Settling Parties and reflecta settlement that was reached voluntarily after consultation with competent legal counsel.The Settling Parties reserve their right to rebut, in a manner that such party determines to beappropriate, any contention made in any public forum that the Action was brought ordefended in bad faith or without a reasonable basis.

8.3 Neither the Stipulation nor the Settlement contained therein, nor anyact performed or document executed pursuant to or in furtherance of the Stipulationor the Settlement: (a) is or may be deemed to be or may be used as an admission of, orevidence of, the validity of any Released Claim, or of any wrongdoing or liability of Defendant; or (b) is or may be deemed to be or may be used as an admission of, or evidenceof, any fault or omission of any of Defendant in any civil, criminal or administrativeproceeding in any court, administrative agency or other tribunal; or (c) is or may be deemedto be, or may be used as an admission or evidence that any claims asserted by Plaintiffwere not valid or that the amount recoverable was not greater than the Settlement amount inany civil, criminal or administrative proceeding in any court, administrative agency or othertribunal. The Released Persons, Plaintiff, and/or Class Counsel may file the Stipulation and/or the Order in any action that may bebrought against them in order to support a defense or counterclaim based on principles of *resjudicata*, collateral estoppel, release, good faith settlement, Order bar or reduction or anyother theory of claim preclusion or issue preclusion or similar defense or counterclaim.

8.4 All agreements made and orders entered during the course of the Actionrelating to the confidentiality of information shall survive this Stipulation.

8.6 The Stipulation may be amended or modified only by a writteninstrument signed by or on behalf of all Settling Parties or their respective successors-in-interest.

8.7 The Stipulation and the attached Exhibits constitute the entireagreement among the Settling Parties and no representations, warranties or inducements havebeen made to any

Settling Parties concerning the Stipulation or the Exhibits otherthan the representations, warranties and covenants contained and memorialized in suchdocuments. Except as otherwise provided herein, each Settling Party shall bear its own costs.

8.8 Neither Class Members nor Defendant shall bebound by the Stipulation if the Court or any appellate court modifies material termsthereof, provided, however, that it shall not be a basis for ClassMembers to terminate the Settlement if the Court modifies any proposed Plan of Distributionor criteria for allocation of the Settlement Fund amongst the ClassMembers, or the Plan of Distribution is modified on appeal. Nor shall it be a basis toterminate the Stipulation if the Court or any appellate court disapproves of ormodifies the terms of this Stipulation with respect to attorney's fees, costs or expenses or the distribution of the Net Settlement Fund. Notwithstandingany such modification of the terms or Plan of Distribution or the Stipulation withrespect to attorney's fees, costs or expenses, Defendant shall beentitled to all benefits of the Settlement and shall not, under any circumstances, be calledupon to contribute additional funds to the Settlement Fund.

8.9 Class Counsel, on behalf of the Class, isexpressly authorized to take all appropriate action required orpermitted to be taken by the Class pursuant to the Stipulation toeffectuate its terms, and also are expressly authorized to enter into any modifications oramendments to the Stipulation on behalf of the Class whichthey deem appropriate.

8.10 Plaintiff and Class Counsel represent and warrant that none of Plaintiff's claims or causes of action referred to in this Action or this Stipulation have been assigned, encumbered or in any manner transferred in whole or in part.

8.11 Each counsel or other Person executing the Stipulation or any of the attached Exhibits on behalf of any Settling Party hereby warrants that such Person has the full authority to do so.

8.12 The Stipulation may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. A complete set of original executed counterparts shall be filed with the Court.

8.13 The Stipulation shall be binding upon, and inure to the benefit of the Settling Parties, their respective heirs, successors or assigns, and any corporation, partnership or other entity into which any of the Settling Parties may merge, consolidate or reorganize.

8.14 The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of the Stipulation, and all Settling Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement embodied in the Stipulation.

8.15 Pending approval of the Court of the Stipulation and the attached Exhibits, all proceedings in this Action shall be stayed and all Class Members shall be barred and enjoined from prosecuting any of the Released Claims against any of the Released Persons.

8.16 This Stipulation and the attached Exhibits shall be considered to have been negotiated, executed and delivered, and to be wholly performed, in the state of New York, and the rights and obligations of the Settling Parties to the Stipulation shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of New York without giving effect to that State's choice-of-law principles.

8.17 Class Counsel shall not utilize the terms of this Settlement, or claims and allegations made in this case as, for, or in advertising material. Class Counsel shall also cause to be removed the following website as soon as practicable: http://www.forthepeople.com/class-action-lawyers/ncsplus-debt-collection.

9. Plan of Distribution

9.1 The Settlement Administrator, subject to such supervision and direction of the Court as may be necessary or as circumstances may require, shall oversee distribution of the Settlement Fund, which shall be applied and distributed by the Settlement Administrator in accordance with the following:

(a) within five calendar days after the Effective Date, to pay Plaintiff a service award in an amount not to exceed $10,000.00, as allowed by the Court;

(b) within five calendar days after the Effective Date, to pay Class Counsel's costs and expenses incurred in connection with the Action, as allowed by the Court;

(c) to pay all the costs and expenses reasonably and actually incurred in connection with providing notice, locating Class Members, and administering and distributing the Settlement Fund to Class Members;

(d) to pay any fees charged by the Escrow Agent pursuant to paragraph 2.1;

(e) within five calendar days after the Effective Date, , to pay Class Counsel's attorney's fees in an amount not to exceed 25% of the Settlement Fund, to the extent allowed by the Court pursuant to the Fee and Expense Motion;

(f) within five calendar days after the Effective Date, and after deduction of the amounts set forth in(a), (b), (c), (d) and (e) of paragraph 9.1, to distribute the balance of the Net Settlement Fund to Class Members, as allowed by the Stipulation, this Plan of Distribution, or the Court by mailing checks in equal *pro rata* amounts to each Class Member at his, her or its mailing address, as maintained by the Settlement Administrator and confirmed through the

National Change of Address Database. The mailed checks shall be valid for a period of one-hundred and eighty (180) days. The cost of these procedures shall be paid out of the Settlement Fund.

(g) For any checks that are returned undeliverable withforwarding address information, the Settlement Administrator shall re-mail the check to the newaddress indicated. For any payment checks that are returned undeliverable without forwardingaddress information, the Settlement Administrator shall make reasonable efforts to identifyupdated address information and re-mail checks to the extent an updated address is identified. The cost of these procedures shall be paid out of the Settlement Fund.

9.2 Defendant and Continental shall not have a reversionary interest in the Net Settlement Fund. If there is any balance remaining in the Net Settlement Fund after one-hundred and eighty (180) days from the date of distribution of the Net Settlement Fund (whether by reason of uncashed checks or otherwise), any such balance shall be donated in the form of a *cy pres* award to Public Justice, or to a 501(c)(3) nonprofit organization approved by the Court.

9.3 Defendant shall take no position with respect to the Plan of Distribution.

9.4 It is understood and agreed by the Settling Parties that any order or proceeding relating to the Plan of Distribution shall not operate to terminate or cancel the Stipulation or affect the finality of the Court's Order approving the Stipulation and the Settlement set forth herein, or any other orders entered pursuant to the Stipulation. Plaintiff, the Class Members and Defendant, and Continental shall be bound by the terms of this Stipulation, irrespective of whether the Court disapproves of or modifies the Plan of Distribution.

9.5 The Released Persons shall have no responsibility for, interest in, or liability whatsoever with respect to the administration and distribution of the Net Settlement Fund, the Plan of Distribution, or any losses incurred in connection therewith.

IN WITNESS HEREOF, the parties hereto have caused the Stipulation to be executed by their duly authorized attorneys, dated as of March 4, 2015.

[SIGNATURES ON NEXT PAGE- REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

NCSPLUS, INC.

By:____________________________________

Christopher Rehkow, as President of NCSPLUS, INC.

EDWARD ZYBURO

By:____________________________________

Mr. Edward Zyburo, Individually and on behalf of the

Certified Class as Class Representative

Continental Casualty Company

By:____________________________________

____

MORGAN & MORGAN, P.A. d/b/a

MORGAN & MORGAN COMPLEX LITIGATION GROUP

By:____________________________________

____

NCSPLUS, INC.

By:____________________________________

Christopher Rehkow, as President of NCSPLUS, INC.

EDWARD ZYBURO

By:____________________________________

Mr. Edward Zyburo, Individually and on behalf of the

Certified Class as Class Representative

Continental Casualty Company

By:____________________________________

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MORGAN & MORGAN, P.A. d/b/a

MORGAN & MORGAN COMPLEX LITIGATION GROUP

By:____________________________________

John Yanchunis

NCSPLUS, INC.

By:______________________________

Christopher Rehkow, as President of NCSPLUS, INC.

EDWARD ZYBURO

By:______________________________

Mr. Edward Zyburo, Individually and on behalf of the

Certified Class as Class Representative

Continental Casualty Company

By: Shauna Rudd

Assistant Vice President

MORGAN & MORGAN, P.A. d/b/a

MORGAN & MORGAN COMPLEX LITIGATION GROUP

By:______________________________

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